IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 1069 of 2006()

CC.862/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

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PETITIONER: ACCUSED

P.V.SANTHOSH, S/O.KARUNAKARAN,
AGED 50 YEARS, CONTRACTOR, KUTHUPARAMBA AMSOM,
AMBILAD DESOM, P.O.KUTHUPARAMBA.

BY ADV. SRI.K.V.PAVITHRAN
SRI.P.P.RAMACHANDRAN

RESPONDENTS: COMPLAINANT

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1. ABDUL NAZAR, S/O.ABDULLA,
AGED 38 YEARS, RESIDING AT KAITHAKKAD,
P.O.CHERUVATHUR,

2. STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.T.K.VIPINDAS
BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT .J

Crl.M.C. No. 1069 OF 2006

Dated this the 18th day of January 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The cheque is for Rs.2,30,000/-. It was admittedly signed and handed over to the complainant by the accused under Annexure-1 agreement . Cognizance has been taken . The petitioner has a contention that there is failure of consideration. He contends that even though the cheque was issued as per annexure-1 agreement to him, for reasons not attributable to him the agreement could not be worked and therefore he is not liable to pay the amount of Rs. 2,30,000/- to the complainant. In short to put it in legal jargon, the contention is that the cheque cannot be said to be issued for the due discharge of any legally enforcible debt or liability.

2. I am certainly of the opinion that this disputed question of fact cannot be resolved in proceedings under Section 482 of the Cr.P.C. The petitioner must certainly appear before the learned Magistrate and raise his contention that there is failure of consideration taking the cheque out of the sweep of Section 138 of the Negotiable Instruments Act. The

petitioner cannot expect this Court to resolve that controversy invoking the extraordinary inherent jurisdiction available to this Court under Section 482 of the Cr.P.C and on the basis of the meager data that is attempted to be thrust into this Court in this proceedings.

3. This Crl.M.C. is in these circumstances dismissed. But I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate and claim acquittal.

R.BASANT, JUDGE

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